

# EXHIBIT 9

## Anchorage, AK

Page 405

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT OF ANCHORAGE

-----X

STATE OF ALASKA, )

Plaintiff, )

vs. )

ALPHARMA BRANDED PRODUCTS DIVISION, )

INC., et al., )

Defendants. )

-----X

Case No. 3AN-06-12026 Civil )

-----X

CAPTIONS CONTINUED ON FOLLOWING PAGE

VOLUME II

VIDEOTAPED DEPOSITION OF DAVID L. CAMPANA

and STATE OF ALASKA 30(b)(6)

Taken August 20, 2008

Taken by the Defendants at

Captain Cook Hotel, Whitby Room

939 West 5th Avenue

Anchorage, Alaska

Reported by: Mary A. Vavrik, RMR

## Anchorage, AK

<p style="text-align: right;">Page 718</p> <p>1 Health?</p> <p>2 A. That was first in 1989, I believe.</p> <p>3 Q. Okay. First Health was acting on</p> <p>4 behalf of the State of Alaska, right?</p> <p>5 A. Yes.</p> <p>6 Q. So if -- so if First Health has URAs,</p> <p>7 in a sense so does the State of Alaska, right,</p> <p>8 because they are acting on its behalf, right?</p> <p>9 A. Yes.</p> <p>10 MR. BURNHAM: Object to form.</p> <p>11 BY MR. KATZ:</p> <p>12 Q. So Alaska had the URAs for Mylan</p> <p>13 Pharmaceuticals' drugs, right?</p> <p>14 MR. BURNHAM: Objection, form.</p> <p>15 THE WITNESS: I don't know that.</p> <p>16 BY MR. KATZ:</p> <p>17 Q. Well, First Health had the URAs for</p> <p>18 Mylan Pharmaceuticals' drugs, right? That you</p> <p>19 know.</p> <p>20 MR. BURNHAM: Object to form.</p> <p>21 THE WITNESS: I would have to assume</p> <p>22 that. And based on looking at invoices,</p>	<p style="text-align: right;">Page 720</p> <p>1 A. I believe that.</p> <p>2 Q. So at least for some of the drugs and</p> <p>3 for some of the times, Alaska had URAs for Mylan</p> <p>4 Pharmaceuticals' drugs, right?</p> <p>5 MR. BURNHAM: Objection, form.</p> <p>6 THE WITNESS: I believe that Mylan did</p> <p>7 provide URAs at periods of time and that we had</p> <p>8 submitted rebates to Mylan.</p> <p>9 BY MR. KATZ:</p> <p>10 Q. When you said that Mylan provided URAs,</p> <p>11 you meant that Mylan provided AMPs, right?</p> <p>12 A. Yeah, right. Rather Mylan provided</p> <p>13 AMPs to CMS who calculated the URAs.</p> <p>14 Q. Okay. We talked about the formula for</p> <p>15 calculating the URA. And before 1994 it was 10</p> <p>16 percent of AMP, right?</p> <p>17 A. That's my recollection.</p> <p>18 Q. So if Alaska received a URA for, say,</p> <p>19 \$2.50, then Alaska would know that the AMP is</p> <p>20 \$25, right?</p> <p>21 A. If we reversed the calculation, we</p> <p>22 would come up with that.</p>
<p style="text-align: right;">Page 719</p> <p>1 sometimes they had -- had URAs and sometimes they</p> <p>2 didn't have URAs, depending on whether the</p> <p>3 manufacturer actually submitted those.</p> <p>4 BY MR. KATZ:</p> <p>5 Q. Assuming CMS received an AMP from Mylan</p> <p>6 Pharmaceuticals and calculated a URA, that URA</p> <p>7 would then be passed on to First Health who was</p> <p>8 acting on behalf of Alaska, right?</p> <p>9 MR. BURNHAM: Objection, form.</p> <p>10 THE WITNESS: There is assumptions in</p> <p>11 there.</p> <p>12 BY MR. KATZ:</p> <p>13 Q. What assumptions?</p> <p>14 A. Well, the assumption is that we would</p> <p>15 have to assume that Mylan passed on the AMP to</p> <p>16 CMS, CMS received that AMP, and then calculated</p> <p>17 the URA and then provided that to First Health.</p> <p>18 Q. Let me ask you this: Did the State of</p> <p>19 Alaska invoice Mylan Pharmaceuticals for rebates?</p> <p>20 A. I believe they did.</p> <p>21 Q. Okay. In order to invoice Mylan</p> <p>22 Pharmaceuticals, it needed the URAs, right?</p>	<p style="text-align: right;">Page 721</p> <p>1 Q. And it's a simple calculation, right?</p> <p>2 A. Yes.</p> <p>3 Q. And have you ever done that?</p> <p>4 A. Not that I can remember.</p> <p>5 Q. Do you know if anyone else at Alaska</p> <p>6 Medicaid has ever done that?</p> <p>7 A. I don't know.</p> <p>8 Q. Have you ever looked at the URAs</p> <p>9 received for any drugs and compared them to any</p> <p>10 other prices available to Alaska Medicaid?</p> <p>11 A. I had looked at some of the URAs</p> <p>12 received for generic drugs and compared them to</p> <p>13 the AWP and noticed that there was a huge</p> <p>14 difference.</p> <p>15 Q. When did you do that?</p> <p>16 A. Somewhere along the line.</p> <p>17 Q. Was it ten years ago?</p> <p>18 A. It was somewhere during the initial</p> <p>19 period of the rebates.</p> <p>20 Q. So that would be in the early '90s?</p> <p>21 A. 1991 to 1995.</p> <p>22 Q. And when you compared the URAs to the</p>

80 (Pages 718 to 721)

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Page 750	Page 752
<p>1 MR. MANGI: Go ahead.</p> <p>2 MR. BURNHAM: Why don't we take a break</p> <p>3 because we have to switch around here.</p> <p>4 THE VIDEOGRAPHER: We will move off</p> <p>5 record at 5:40.</p> <p>6 (Off the record.)</p> <p>7 THE VIDEOGRAPHER: We are on record,</p> <p>8 5:44.</p> <p>9</p> <p>10 EXAMINATION</p> <p>11 BY MR. BURNHAM:</p> <p>12 Q. Mr. Campana, as you know, I'm Richard</p> <p>13 Burnham. I'm one of the counsel representing the</p> <p>14 State in this action.</p> <p>15 A. Yes.</p> <p>16 Q. Has any drug manufacturer since 1990</p> <p>17 ever informed you that its published AWP was</p> <p>18 simply a number that they made up?</p> <p>19 MS. WITT: Object to the form. And I</p> <p>20 assume we can have the same agreement from the</p> <p>21 plaintiffs' counsel that will cover everyone? Is</p> <p>22 that all right with the Department of Justice as</p>	<p>1 pharmacies, other than that Verme study?</p> <p>2 A. No.</p> <p>3 Q. Look at Exhibit 37, please. Exhibit 37</p> <p>4 is the Verme study, is that correct?</p> <p>5 A. Yes.</p> <p>6 Q. Look down in paragraph 1.4.1 where they</p> <p>7 describe the survey that they sampled. You see</p> <p>8 that?</p> <p>9 A. Yes.</p> <p>10 Q. And you understood that they surveyed a</p> <p>11 total of 12 providers?</p> <p>12 A. Yes.</p> <p>13 Q. And they surveyed 22 drugs?</p> <p>14 A. Yes.</p> <p>15 Q. How many providers were there in Alaska</p> <p>16 at that time, approximately?</p> <p>17 A. There was approximately 100 providers.</p> <p>18 Q. And about how many prescription drugs</p> <p>19 NDCs were there at that time?</p> <p>20 A. I believe at that time there was in</p> <p>21 excess of 140 drugs, drug NDCs.</p> <p>22 Q. So did anyone in your department</p>
Page 751	Page 753
<p>1 well?</p> <p>2 THE WITNESS: I don't remember.</p> <p>3 MR. HENDERSON: Yes, that's fine.</p> <p>4 BY MR. BURNHAM:</p> <p>5 Q. Do we have Exhibit 16 handy, please?</p> <p>6 Do you have Exhibit 16?</p> <p>7 A. Yes.</p> <p>8 Q. If you go to the second page, please,</p> <p>9 the fourth paragraph, you were asked about this</p> <p>10 earlier. The representation is made there that</p> <p>11 it is the intent of the State of Alaska "to pay</p> <p>12 no more than documented, estimated acquisition</p> <p>13 cost on a statewide average basis for</p> <p>14 ingredients." Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. To your knowledge, did that intention</p> <p>17 of the State ever change since this document was</p> <p>18 written in 1988?</p> <p>19 A. No.</p> <p>20 Q. Since you became employed by the State,</p> <p>21 have you ever been provided with a study of</p> <p>22 actual acquisition costs applicable to Alaska</p>	<p>1 consider this Verme survey to be a sufficient</p> <p>2 sampling to permit you to use a reimbursement</p> <p>3 formula of AWP minus 13 percent?</p> <p>4 MS. WITT: Objection.</p> <p>5 THE WITNESS: It was not an adequate</p> <p>6 sample.</p> <p>7 BY MR. BURNHAM:</p> <p>8 Q. Take a look at Exhibit 41, please. And</p> <p>9 Verme's -- Verme found, from what they did</p> <p>10 survey, the pharmacies seemed to be obtaining</p> <p>11 drugs at AWP minus 13 percent, correct?</p> <p>12 A. For those 12 pharmacies.</p> <p>13 Q. And those 22 drugs?</p> <p>14 A. For those 22 drugs.</p> <p>15 Q. Look at Exhibit 41, please. And turn</p> <p>16 to page 6 of that document.</p> <p>17 MR. HENDERSON: I'm sorry, which</p> <p>18 exhibit is that?</p> <p>19 MR. BURNHAM: I'm sorry. It's Exhibit</p> <p>20 41. Bates number starts with 68.</p> <p>21 THE WITNESS: Okay.</p> <p>22 BY MR. BURNHAM:</p>

88 (Pages 750 to 753)

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## Anchorage, AK

Page 754	Page 756
<p>1 Q. Page 6, paragraph (f). This is a</p> <p>2 document that I understood was in your files when</p> <p>3 you showed up for employment at the State of</p> <p>4 Alaska?</p> <p>5 A. Yes.</p> <p>6 Q. And it's represented there in paragraph</p> <p>7 (f) that "Many of the pharmacies" received</p> <p>8 financing "on the condition that these pharmacies</p> <p>9 buy their drugs from this wholesaler at no</p> <p>10 discount from AWP." You see that?</p> <p>11 A. Yes.</p> <p>12 Q. So when you showed up for work at the</p> <p>13 State of Alaska, you had an inadequate sampling</p> <p>14 suggested -- suggesting a reimbursement rate of</p> <p>15 AWP minus 13 percent, and you had representations</p> <p>16 from your medical director that other pharmacies</p> <p>17 purchased at full AWP, correct?</p> <p>18 MS. WITT: Objection, leading.</p> <p>19 MR. KATZ: Leading.</p> <p>20 MR. TORBORG: Leading.</p> <p>21 THE WITNESS: I had information in my</p> <p>22 files that showed that there was a small sample,</p>	<p>1 Verme report?</p> <p>2 A. No.</p> <p>3 Q. Did you have any information indicating</p> <p>4 that Alaska's methodology provided a profit for</p> <p>5 any drugs not included in the Verme report?</p> <p>6 A. No.</p> <p>7 Q. Let's look at Exhibit 32, please. You</p> <p>8 have that?</p> <p>9 A. Yes.</p> <p>10 Q. If you turn to page 12, please, at the</p> <p>11 bottom. You were asked some questions about Mr.</p> <p>12 Ron Sedgwick's testimony reflected in this</p> <p>13 document. Indicated that he was a pharmacist</p> <p>14 from Juneau, a member of the pharmacy association</p> <p>15 and a member of the pharmacy steering committee.</p> <p>16 Remember being asked about that?</p> <p>17 A. Yes.</p> <p>18 Q. And the pharmacy steering committee was</p> <p>19 the group that formulated Alaska's reimbursement</p> <p>20 methodology?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Let's look at what Mr. Sedgwick</p>
Page 755	Page 757
<p>1 and then there was information that was provided</p> <p>2 to CMS that showed that there was -- some</p> <p>3 pharmacies purchased at AWP without discount.</p> <p>4 BY MR. BURNHAM:</p> <p>5 Q. And the Alaska formula in place when</p> <p>6 you arrived was AWP minus five percent, right?</p> <p>7 MR. KATZ: Objection, form.</p> <p>8 THE WITNESS: That is correct.</p> <p>9 BY MR. BURNHAM:</p> <p>10 Q. Prior to filing this -- or this lawsuit</p> <p>11 being filed, did you receive any data for Alaska</p> <p>12 pharmacies causing you to conclude that AWP minus</p> <p>13 five percent was an inappropriate figure to use</p> <p>14 as a statewide average EAC for Alaska?</p> <p>15 A. I did not receive any.</p> <p>16 Q. We talked about profits in your</p> <p>17 testimony yesterday. Other than the Verme report</p> <p>18 showing that some small number of pharmacies were</p> <p>19 able to purchase at AWP minus 13 percent, did you</p> <p>20 have any data indicating that Alaska's</p> <p>21 methodology for estimating acquisition costs paid</p> <p>22 a profit to any pharmacies not included in the</p>	<p>1 had to say in his testimony. Do you see where he</p> <p>2 reports that "AWP is the actual price that he</p> <p>3 pays the wholesaler before discounts"?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And then he goes on to identify</p> <p>6 two discounts, correct?</p> <p>7 A. Yes.</p> <p>8 Q. Indicates one discount can be gained by</p> <p>9 ordering certain quantities of drugs, correct?</p> <p>10 A. Correct.</p> <p>11 Q. And one discount can be obtained by</p> <p>12 paying in advance?</p> <p>13 A. That's correct.</p> <p>14 Q. And then he reported to the legislature</p> <p>15 the result is, if you get both of those</p> <p>16 discounts, a cost savings to the pharmacist of</p> <p>17 AWP minus 10 percent, correct?</p> <p>18 A. Correct.</p> <p>19 Q. Okay. Did he disclose any information</p> <p>20 in his testimony regarding actual acquisition</p> <p>21 costs for rural pharmacies?</p> <p>22 A. Not that I remember.</p>

89 (Pages 754 to 757)

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## Anchorage, AK

Page 758	Page 760
<p>1 Q. Did he disclose actual acquisition</p> <p>2 costs for pharmacies that were unable to order</p> <p>3 sufficient quantities of drugs to obtain this</p> <p>4 discount he was referring to from AWP?</p> <p>5 A. No.</p> <p>6 Q. Did he give any information about the</p> <p>7 discount that was obtained by paying in advance?</p> <p>8 A. No.</p> <p>9 Q. Did he give any indication of what</p> <p>10 percentage of the providers in Alaska could</p> <p>11 actually qualify for either one of these</p> <p>12 discounts?</p> <p>13 A. No.</p> <p>14 Q. Now, when Alaska developed its</p> <p>15 methodology for reimbursement of pharmacies and</p> <p>16 other drug providers, it was required to provide</p> <p>17 that to the federal government, is that accurate?</p> <p>18 A. That's accurate.</p> <p>19 Q. And was the State required to justify</p> <p>20 that methodology in some fashion?</p> <p>21 A. It's my understanding that they did</p> <p>22 have to justify it in letters to CMS; HCFA at</p>	<p>1 just based on what was provided back when I was</p> <p>2 working in retail.</p> <p>3 Q. Exhibit 61, please. You were asked</p> <p>4 about the answer to Interrogatory No. 8. Do you</p> <p>5 recall being asked about that and you responded</p> <p>6 that that was an untrue statement?</p> <p>7 A. Let's see. Interrogatory 8.</p> <p>8 Q. The answer, the first sentence.</p> <p>9 A. Oh.</p> <p>10 Q. "Given Alaska did not know providers'</p> <p>11 actual acquisition costs," you see that?</p> <p>12 A. Okay.</p> <p>13 Q. Did Alaska know all of the providers'</p> <p>14 actual acquisition costs in the state?</p> <p>15 A. No.</p> <p>16 Q. Is it accurate to say, as is written</p> <p>17 there, that therefore "no person knew at any time</p> <p>18 that the described reimbursements exceeded</p> <p>19 providers'" -- that's plural -- "actual</p> <p>20 acquisition cost"?</p> <p>21 MR. KATZ: Objection, form.</p> <p>22 THE WITNESS: It's accurate to say that</p>
Page 759	Page 761
<p>1 that time.</p> <p>2 Q. They would have to provide sufficient</p> <p>3 data for the federal government to approve the</p> <p>4 methodology?</p> <p>5 A. At least sufficient description of --</p> <p>6 of what they had determined or found.</p> <p>7 Q. Okay. And the federal government has</p> <p>8 approved Alaska's methodology of AWP minus five</p> <p>9 percent?</p> <p>10 A. That is true.</p> <p>11 MR. KATZ: Objection, form.</p> <p>12 BY MR. BURNHAM:</p> <p>13 Q. When did you first learn of an AWP --</p> <p>14 strike that. When did you first learn of drugs</p> <p>15 that pharmacies could purchase for less than half</p> <p>16 of the published AWP?</p> <p>17 A. I'm not sure where I picked that up,</p> <p>18 but for generic drugs there was information that</p> <p>19 you could purchase those at a -- at a very small</p> <p>20 rate compared to AWP.</p> <p>21 Q. And is that something recent?</p> <p>22 A. I remember some of that information</p>	<p>1 if you look at all providers.</p> <p>2 MR. BURNHAM: Okay. Thank you. I have</p> <p>3 no more questions.</p> <p>4</p> <p>5 FURTHER EXAMINATION</p> <p>6 BY MR. MANGI:</p> <p>7 Q. All right, sir. You remember me. I am</p> <p>8 Adeel Mangi. I'm going to ask you just few more</p> <p>9 questions. I appreciate the day is wearing on.</p> <p>10 Mr. Burnham asked you a number of questions</p> <p>11 today. Did you have occasion to discuss those</p> <p>12 questions with him before testifying now?</p> <p>13 MR. BURNHAM: Objection. You don't</p> <p>14 have to answer anything about what we discussed.</p> <p>15 You don't have to answer.</p> <p>16 BY MR. MANGI:</p> <p>17 Q. Did you meet with Mr. Burnham at the</p> <p>18 break that took place prior to his questioning</p> <p>19 you?</p> <p>20 A. No.</p> <p>21 Q. Now, Mr. Burnham showed you a number of</p> <p>22 letters that were sent from Alaska to CMS. You</p>

90 (Pages 758 to 761)

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## Anchorage, AK

Page 762

1 remember that, or HCFA?  
 2 A. Yes.  
 3 Q. Now, as we discussed yesterday, when  
 4 Alaska was communicating with HCFA, it was  
 5 important and understood to be important that  
 6 Alaska use particular language and phrase things  
 7 in a particular way, correct?  
 8 MR. BURNHAM: Objection, form.  
 9 THE WITNESS: Alaska used certain --  
 10 certain language in the discussion with CMS, or  
 11 HCFA in those days.  
 12 BY MR. MANGI:  
 13 Q. Now, one of the phrases used in --  
 14 which Mr. Burnham pointed you to is "documented  
 15 EAC," correct?  
 16 A. EAC was -- was discussed.  
 17 Q. Now, when Alaska used the term  
 18 "estimated acquisition cost," it understood that  
 19 that's something different from actual  
 20 acquisition cost, correct?  
 21 A. If you look at those -- if I look at  
 22 those two terms now, I see a difference.

Page 763

1 Q. And indeed, the folks who set up the  
 2 system in 1989, Mr. Hansen, Ms. Busch, they  
 3 certainly understood there was a difference, too.  
 4 That's obvious from the documents we looked at  
 5 yesterday, correct?  
 6 MR. BURNHAM: Objection, form.  
 7 THE WITNESS: I believe that they did  
 8 see a difference in those.  
 9 BY MR. MANGI:  
 10 Q. And indeed, one of the key differences  
 11 that -- within the estimated acquisition cost  
 12 methodology, CMS affords states like Alaska  
 13 flexibility to take account of local  
 14 circumstances, correct?  
 15 A. CMS did look at that, apparently, in  
 16 approving the state plan.  
 17 Q. And those local circumstances you are  
 18 allowed to take account of in determining your  
 19 methodology include factors like what's required  
 20 to get access, political circumstances in the  
 21 state, things of that nature, correct?  
 22 A. I don't know that.

Page 764

1 MR. BURNHAM: Objection, form.  
 2 BY MR. MANGI:  
 3 Q. Well, those are the factors that you  
 4 wrote up in your white paper which you sent to  
 5 CMS as justification for the methodology,  
 6 correct?  
 7 A. Those were in my white paper.  
 8 Q. So certainly you considered those  
 9 factors of importance to CMS when defending  
 10 Alaska's methodologies, yes?  
 11 A. Yes.  
 12 Q. Mr. Burnham also asked you a number of  
 13 questions about the Verme study. You remember  
 14 those?  
 15 A. Yes.  
 16 Q. The Verme study is not the only source  
 17 of information you have ever come across relating  
 18 to AWP and acquisition costs, yes?  
 19 A. It's the only one that was used in a  
 20 systematic function or a study form.  
 21 Q. That's not what I asked you, sir. It  
 22 is one source of information. I appreciate it's

Page 765

1 the only study you have seen until the current  
 2 one pertaining to Alaska specifically. My  
 3 question is different. It's not your only source  
 4 of information about AWP, correct?  
 5 A. It's not the only source about -- well,  
 6 I have other sources about AWP.  
 7 Q. For example, one source is the classes  
 8 you took in pharmacy school in the 1960s, right?  
 9 A. There were information about average  
 10 wholesale that I learned in college.  
 11 Q. Another source of information are  
 12 people at the Medicaid agency like Mr. [sic]  
 13 Busch and Mr. Hansen, right?  
 14 MR. HENDERSON: Objection.  
 15 THE WITNESS: There was other sources,  
 16 but not complete.  
 17 BY MR. MANGI:  
 18 Q. Another source -- there were other  
 19 sources of information, yes?  
 20 A. There were --  
 21 MR. HENDERSON: Objection.  
 22 THE WITNESS: -- other sources of

91 (Pages 762 to 765)

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